

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**TIMOTHY E. MATNEY**

Claimant

VS.

**BUCHANAN CONSTRUCTION COMPANY, INC.**

# PULTE HOMES

## Respondents

AND

**TRAVELERS INSURANCE COMPANY**

## PACIFIC EMPLOYERS INSURANCE

## Insurance Carriers

AND

# KANSAS WORKERS COMPENSATION FUND

Docket No. 244,327

## ORDER

Travelers Insurance Company (Travelers) appealed Administrative Law Judge Steven J. Howard's September 9, 1999, preliminary hearing Order.

## ISSUES

Travelers contends the Administrative Law Judge exceeded his jurisdiction when he ordered Travelers to pay claimant workers compensation benefits for an April 26, 1999, injury claimant sustained while employed by the respondent.

In their briefs, Buchanan Construction Company, Inc.; Pulte Homes, and its insurance carrier, Pacific Employers Insurance; and the Kansas Workers Compensation Fund; all question the Appeals Board's jurisdiction to review this preliminary hearing issue.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board makes the following findings and conclusions:

The preliminary hearing was held in this matter on May 25, 1999, before the Administrative Law Judge. At that hearing, the following parties were represented by counsel: (1) claimant; (2) respondent, Buchanan Construction Company, Inc.; (3) the alleged principal contractor, Pulte Homes, and its insurance carrier, Pacific Employers Insurance; (4) respondent's alleged workers compensation insurance carrier on claimant's date of accident, Travelers Insurance Company; and (5) the Kansas Workers Compensation Fund.

At the preliminary hearing, all of the parties stipulated to the various conditions necessary to find claimant was entitled to preliminary workers compensation benefits. But there remained the issue of the proper party responsible under the Act to pay those workers compensation benefits. The Administrative Law Judge continued the preliminary hearing until evidentiary depositions could be taken on the issues of whether Travelers had workers compensation insurance coverage for the respondent on claimant's date of accident, whether respondent was an insolvent employer, and whether claimant was a statutory employee of Pulte Homes.

After the evidentiary depositions were taken, the Administrative Law Judge entered the September 9, 1999, preliminary hearing Order that is the subject of this appeal. The Administrative Law Judge ordered Travelers to provide claimant with medical treatment through two authorized treating physicians, to pay claimant weekly temporary total disability benefits, and to reimburse claimant for out-of-pocket medical expenses of \$183.43.

On appeal, Travelers argues the Administrative Law Judge lacked jurisdiction to order Travelers to pay the preliminary benefits. Travelers argues it did not have workers compensation insurance coverage on Buchanan Construction Company on claimant's date of accident.

The first issue the Appeals Board will address is whether the Appeals Board has jurisdiction on appeal from a preliminary hearing order to review the issue raised by Travelers. The Appeals Board's review of preliminary hearing findings is limited.<sup>1</sup> Under K.S.A. 1998 Supp. 44-534(a), the Appeals Board may review preliminary hearing findings regarding the following issues: (1) whether the worker suffered an accidental injury; (2) whether the accidental injury arose out of and in the course of the employment; (3) whether notice was given or claim was timely made; and (4) whether certain defenses apply. Under K.S.A. 1998 Supp. 44-551(b)(2)(A), a preliminary award can be reviewed when the

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<sup>1</sup>See K.S.A. 1998 Supp. 44-534(a) and K.S.A. 1998 Supp. 44-551(b)(2)(A).

Administrative Law Judge has exceeded his or her jurisdiction in granting or denying the relief requested.

The Appeals Board finds the issue raised by Travelers is not whether the Administrative Law Judge exceeded his jurisdiction, but whether the Administrative Law Judge erred in determining Travelers had workers compensation insurance coverage for Buchanan Construction Company on the date of claimant's accident. The Appeals Board finds that issue is not subject to review under K.S.A. 1998 Supp. 44-551(b)(2)(A) and is not a jurisdictional issue listed in K.S.A. 1998 Supp. 44-534(a).<sup>2</sup>

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that it does not have jurisdiction to review Administrative Law Judge Steven J. Howard's September 9, 1999, preliminary hearing Order and this appeal should be, and the same is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1999.

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BOARD MEMBER

c: Michael W. Downing, Kansas City, MO.  
Timothy E. Power, Overland Park, KS.  
Gary R. Terrill, Overland Park, KS.  
Theresa A. Otto, Kansas City, MO.  
J. Paul Maurin III, Kansas City, KS.  
Steven J. Howard, Administrative Law Judge  
Philip S. Harness, Director

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<sup>2</sup>See O'Hara v. O'Hara Painting Co., Inc., WCAB Docket No. 214,169 (December 1996).